

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Standards of Practice for Telehealth

Section Affected: Title 16, Division 39, California Code of Regulations, Section 4172

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of the public. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

The purpose of the proposed regulatory language is to implement and clarify existing law, Business and Professions Code (BPC) section 2290.5, pertaining to services provided via "telehealth." Telehealth is not a separate form of practice; it's a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health while the patient is at a different site and location from where the treating health care professional is located. This emerging method in delivering health care services is designed to expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to establish standards for occupational therapy practitioners providing services via telehealth and identify and clarify the factors that occupational therapy practitioners must consider prior to providing services via telehealth. This language is intended to facilitate the administration, coordination, and enforcement of the laws and regulations that occupational therapy practitioners must abide by while promoting public health, safety, and awareness.

Factual Basis/Rationale

Section 4172(a) establishes that occupational therapy practitioners providing services via telehealth to patients or clients in California must possess a valid and current license issued by the Board to provide these services.

The reason and rationale for the regulatory language proposed in section 4172(a) is to implement and clarify statutory language set forth in BPC section 2290.5(3) requiring that the occupational therapy practitioner providing telehealth services must be licensed by the Board.

Section 4172(b) proposes to establish that the same standard of care exists for services provided via telehealth as there would for any other mode in delivering occupational therapy services.

The reason and rational for the regulatory language proposed in section 4172(b) is to implement BPC section 2290.5(d) and clarify that, regardless of the mode of delivery of services, the occupational therapy practitioner must exercise an established standard of care.

Section 4127(c) proposes to require occupational therapists to obtain a client's or patient's consent, prior to delivering telehealth services. The section also would require the occupational therapist to document the client's or patient's consent in the medical record.

The reason and rationale for the regulatory language proposed in section 4127(c) is to implement BPC section 2290.5(b) requiring occupational therapy practitioners to obtain the client's or patient's consent prior to the delivering telehealth services, and maintain documentation of that consent.

Section 4127(d) would establish that prior to providing telehealth services an occupational therapist shall determine whether an in-person evaluation is necessary or if in-person intervention (treatment) is necessary based on the complexity of the patient's/client's condition; the practitioner's own skills and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

The reason and rational for the regulatory language proposed in section 4127(d) is to implement BPC section 2290.5(d) by establishing standards an occupational therapy practitioners must follow when prior to providing services via telehealth.

Section 4127(e)(1) and (2) would clarify and establish that when occupational therapy practitioners provide services via telehealth, they must provide services consistent with the scope of practice defined in BPC Section 2570.2(k) and comply with the ethical standards of practice and any other applicable laws.

The reason and rational for the regulatory language proposed in section 4127(e)(1) is to implement BPC section 2290.5(d) by requiring occupational therapy practitioners provide services within their scope of practice.

The reason and rational for the regulatory language proposed in section 4127(e)(2) is to implement BPC section 2290.5(d) by clarifying that occupational therapy practitioners must adhere to the same laws and regulations governing the practice of occupational therapy, even when services are provided via telehealth.

UNDERLYING DATA:

None

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

In all likelihood this proposed regulation will promote expanded opportunities for hospitals, health care and rehabilitation businesses, and information technology companies.

ECONOMIC IMPACT ANALYSIS

The proposed regulatory action will establish rules and practice standards for occupational therapists delivering services via telecommunication.

The Board anticipates the proposed regulatory action will increase job opportunities for occupational therapy practitioners and in technology/ telecommunications communities to meet confidentiality requirements inherent in health care records management. It is anticipated that the demand for occupational therapy practitioners will increase in order to meet the unmet need of remote, rural or underserved communities or to provide services to those with limited mobility or transportation issues, who will all benefit from increased access to occupational therapy services.

The Board anticipates the proposed regulatory action will promote new business and will not result in the elimination of existing business. Health care entities, private practices, hospitals, rehabilitation companies, etc., will be afforded new opportunities to expand their business by providing access to services to consumers in remote or rural areas.

Not all services will be appropriate for delivery via telehealth; services will be based on the nature and complexity of client's condition. Businesses that choose not to purchase telecommunication equipment will still be competitive and viable since the majority of services would still be provided traditionally, via face-to-face evaluation and intervention.

The proposed regulatory action will expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel. The proposed regulatory language set forth rules and requirements that are designed to protect the public in the delivery of this emerging and modern way of providing services.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation would mandate the use of specific technologies or equipment that would maintain the confidentiality of a patient's medical information.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.